

REMARKS

This application is amended in a manner believed to place it in condition for allowance at the time of the next Official Action.

Claim 1 is amended. Support for the amendment may be found, for example, at page 1, lines 1-6 and page 1, line 21 to page 2, line 2.

Claims 1-4, 10, 11, 13, 15-19, 26, and 29-32 are pending in the present application.

Claims 1-4, 10, 11, 13, 15-19, 26, and 29-32 were rejected under 35 USC §103(a) as allegedly being unpatentable over WO 99/36445 (English equivalent U.S. 6,197,287) in view of FR 97-04876 (English equivalent U.S. 6,353,034). This rejection is respectfully traversed.

US '287 is offered for teaching a composition with cosmetic applications comprising an oil phase, an aqueous phase, water-in-oil (W/O) emulsifiers, an oil-in-water (O/W) emulsifiers, and 20-45% of a branched or crosslinked polyelectrolyte. US '287 is also offered for disclosing octyl palmitate, 15-40% oil phase, 25-40% W/O, and 60-75% O/W emulsifiers.

US '034 is offered for teaching compositions comprising polyglycosides as emulsifiers, emulsions with remarkable textural properties, an oil phase of fatty acid esters, and synthetic polymer stabilizers, including crosslinked acrylic polymers.

The position of the Official Action is that it would have been obvious to one of ordinary skill to add an alkyl polyglycoside to the composition of US '287 to achieve the beneficial effect of achieving remarkable properties in view of US '034.

However, the Official Action does not explain how US '287 and/or US '034 teaches a W/O inverted latex composition comprising an oil fatty phase with a constituent solvent being fatty acid esters.

US '287 discloses a W/O inverted latex composition comprising 15-40% oil phase, 20-60% of a branched or crosslinked polyelectrolyte, 25-40% W/O, and 60-75% O/W emulsifiers. The inverted latex does not comprise fatty acid esters in the oil phase.

Indeed, the inverted latex and fatty acid esters are added to a cosmetic composition, but the amount of inverted latex is only 0.1% to 10% of the cosmetic composition (e.g. column 1, lines 5-10 and 50-61, column 3, lines 17-50, and column 4 lines 40-42). For example, US '287 discloses a cream-gel with 3% of the inverted latex, or "composition 1", and 10% fatty acid esters (see, e.g., column 7, line 55 to Column 8 line 17). US '287 also discloses a moisturizing cream comprising 0.6% of the inverted latex (e.g., "compound of Example 1") and 10% fatty acid esters (see Example 15).

Thus, US '287 teaches that the compositions comprising an oil phase with fatty acid esters and 0.1% to 10% of the

inverted latex would only comprise 0.02% to 6% of a branched or crosslinked polyelectrolyte (i.e., based on the 20-60% present in the inverted latex).

Therefore, US '287 does not disclose a composition, let alone an inverse W/O latex, that comprises both an oil phase with fatty acid esters and 20-70% of a branched or crosslinked polyelectrolyte, as recited in independent claim 1.

US '034 is offered for teaching alkyl polyglycosides, but US '034 does not suggest increasing the amount of branched or crosslinked polyelectrolyte in the fatty acid esters-containing composition of US '287. Rather, US '034 discloses compositions having only 0.1% to 5% of a crosslinked acrylic polymer and up to 50% of an oil phase, which may include fatty acid esters. The compositions are emulsions having the oil phase dispersed in the water phase, or O/W emulsions, not W/O latices (column 5, lines 51-55).

Thus, the combination of US '287 and US '034 cannot teach the recited composition of claim 1, an self-invertible inverse W/O latex, including both an oil phase with fatty acid esters and 20-70% of a branched or crosslinked polyelectrolyte. At best, the combination teaches a cosmetic composition comprising up to 6% crosslinked acrylic polymer and an oil phase with fatty acid esters.

The Official Action offers no explanation as to how or why one of ordinary skill in the art would have (1) increased the amount of crosslinked polyelectrolyte from 0.02%-6% to 20%-70% in

the cosmetic composition of US '287, and obtained a self-invertible, inverse W/O latex or (2) added fatty acid esters to the oil phase of the inverted W/O latex of US '287.

Thus, in view of the above, the proposed combination fails to render obvious independent claim 1, and dependent claims 2-4, 10, 11, 13, 15-19, 26, and 29-32.

Therefore, withdrawal of the rejection is respectfully requested.

Claims 1-4, 10, 11, 13, 15-19, 26, and 29-32 were rejected on the ground of nonstatutory obviousness type double patenting as being unpatentable over claim 1-15 of U.S. 6,197,287. This rejection is respectfully traversed.

As discussed above, claim 1 of the present invention recites a self-invertible inverse W/O latex, comprising both an oil phase with fatty acid esters and 20-70% of a branched or crosslinked polyelectrolyte.

The Official Action states that octyl palmitate is disclosed by US '287.

However, octyl palmitate is not claimed, and a rejection on the ground of nonstatutory obviousness type double patenting should be based on the claims of the reference. Thus, claims 1-15 of US '287 alone cannot render obvious independent claim 1, and dependent claims 2-4, 10, 11, 13, 15-19, 26, and 29-32.

Moreover, as discussed above, US '287 does not even disclose octyl palmitate, or any fatty ester, in combination with

20-70% of a branched or crosslinked polyelectrolyte, as recited in claim 1 of the present invention. Rather, US '287 discloses adding fatty esters, such as octyl palmitate, and 0.1-10% of an inverted latex comprising 20-60% of a branched or crosslinked polyelectrolyte to a cosmetic composition. The resulting cosmetic composition comprises fatty esters, such as octyl palmitate, and 0.02%-6% of a branched or crosslinked polyelectrolyte. Thus, even as disclosed, US '287 does not teach the claimed invention, and does not render independent claim 1, and dependent claims 2-4, 10, 11, 13, 15-19, 26, and 29-32.

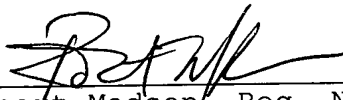
Therefore, withdrawal of the rejection is respectfully requested.

In view of the above, applicants believe the present application is in condition for allowance at the time of the next Official Action. Allowance and passage on that basis is respectfully requested.

The Commissioner is hereby authorized, in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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